SUPREME COURT OF THE UNITED STATES.

No. 76. 28.

LESSEE OF EDWARD LIVINGSTON, ET AL., PLAINTIFFS IN ERROR,

VERSUS

JOHN MOORE, ET AL.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF PENNSYLVANIA.

INDEX.

	Original.	Print.
Writ of error	1a	2
Citation and service	2a	3
Declaration	1	4
Issue joined	4	5
Jury sworn	5	5
Verdict of jury	6	5
Judgment on verdict	6	5
Agreement of parties	7	6
New jury sworn	8	6
Verdict of jury	9	6
Final judgment	9	6
Certificate of clerk	10	7
Bill of Exceptions	12	7
Proceedings in the supreme court of Pennsylvania in the case of the commonwealth of Pennsylvania *versus* John Nicholson	15	8
Acts of the general assembly of Pennsylvania	20	9
Extract from the journal of the House of Reps. of Penn'a, of 22 Mar. 1796	22	10
Do. " " " " 24 Mar. '98	24	10
Do. " " " " 30 Mar. '99	25	10
Testimony of Alexander M. Piper	26	10
Subpœna duces tecum	28	10
1st account mentioned in subpœna	31	13
2d do. " "	32	14
3d do. " "	33	15
Comptroller general's leger C offered in evidence, and testimony of Alexander M. Piper	34	16
Sundry testatum fi. fa.'s against John Nicholson, and returns	39 to 42	16
Docket entries	42	17

Warrants and surveys....44....17
Deposition of Joshua Dickinson....45....17
Document A, referred to in Dickinson's deposition....50....18
The other document referred to in said deposition....51....18
Certificate from the bank of Pennsylvania....51....18
Deposition of Martha Moulder....52....19
Entries contained in the family bible....58....20
Deposition of Samuel Blythe....59....20
Further testimony of Alexander M. Piper....59....20
Act of the General Assembly of Pennsylvania of 24 March, 1802....60....20
Grant of the commonwealth of Pennsylvania to Wm. Scott....62....20
Commsisioners' certificate....64....21
Docket entries....66....22
Further examination of Alexander M. Piper, by defendants....66....22
Account No. 1....70....23
Account No. 2....71....23
Act of the General Assembly of Pennsylvania....72....24
Leger C again offered in evidence....72....24
Advertisements of Samuel Bryan, comptroller general....73....24
Charge and instruction of the court to the jury....74....24
Extracts from newspaper called the Aurora....77....24,25
Agreement of parties....79....25

UNITED STATES, sct.

The President of the United States to the judges of the circuit court of the United States, holden in and for the district of Pennsylvania, in the third circuit, greeting:

Because that in the record and process, and also in the rendering of judgment in a suit before you, or some of you, between Richard Smith, a citizen of the State of Louisiana, lessee of Edward Livingston, and also lessee of John Nicholson, James Nicholson, George W. Morgan and Sarah his wife, in right of said Sarah, Duncan Hennen, an infant, by Alfred Hennen, his next friend, and Hannah Nicholson, an infant, by the said John Nicholson, her next friend, all citizens of the State of Louisiana, plaintiffs, and John Moore, John D. Mahon, esquire, Barnet Aughenbaugh, David Reynolds, and William Scott, citizens of the State of Pennsylvania, defendants, in a plea of trespass and ejectment, a manifest error has intervened, to the great damage of the said plaintiff, as in his complaint has been stated. And it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded, that if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States on the second Monday in January, one thousand eight hundred and thirty-one, at the city of Washington, being the seat of National Government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

276

Witness the honorable John Marshall, chief justice of the Supreme Court of the United States at Washington aforesaid, this day of , in the year of our Lord one thousand eight hundred and , and of the independence of the United States the fifty-fifth.

D. CALDWELL, *Clk. Circ. Ct.* [L. S.]

Allowed by

JOS. HOPKINSON.

UNITED STATES, DISTRICT OF PENNSYLVANIA, sct.

To John Moore, John D. Mahon, esquire, Barnet Aughenbaugh, David Reynolds and William Scott, citizens of the State of Pennsylvania.

Whereas, by a writ of error issuing out of the Supreme Court of the United States, directed to the judges of the circuit court of the United States, holden in and for the district of Pennsylvania in the third circuit, wherein Richard Smith, a citizen of the State of Louisiana, lessee of Edward Livingston, and also lessee of John Nicholson, James Nicholson, George W. Morgan and Sarah his wife, in right of said Sarah, Duncan Hennen, an infant, by Alfred Hennen, his next friend, and Hannah Nicholson, an infant, by the said John Nicholson, her next friend, all citizens of the State of Louisiana, is the complainant, the said judges are directed to send the record and process of a certain suit, with all things concerning them, so that the same may be had before the chief justice and associate justices of the Supreme Court of the United States, on the second Monday in January instant, at the city of Washington, being the seat of National Government, in which suit the said Richard Smith, a citizen of the State of Louisiana, lessee of Edward Livingston, and also lessee of John Nicholson, James Nicholson, George W. Morgan and Sarah his wife, in right of the said Sarah, Duncan Hennen, an infant, by Alfred Hennen, his next friend, and Hannah Nicholson, an infant, by the said John Nicholson, her next friend, all citizens of the State of Louisiana, was original plaintiff, and you the said John Moore, John D. Mahon, esquire, Barnet Aughenbaugh, David Reynolds, and William Scott, citizens of the State of Pennsylvania, defendants in a plea of trespass and ejectment; that the record and process aforesaid being inspected, they, the said Supreme Court, may cause to be done thereupon what of right ought to be done; and the said Richard Smith, a citizen of the State of Louisiana, lessee of Edward Livingston, and also lessee of John Nicholson, James Nicholson, George W. Morgan and Sarah his wife, in right of said Sarah, Duncan Hennen, an infant, by Alfred Hennen, his next friend, and Hannah Nicholson, an infant, by the said John Nicholson, her next friend; having made an assignment of errors, and given good and sufficient security that the plaintiff in error shall prosecute his writ to effect, and answer all such costs as upon an affirmance of the judgment of the said circuit court may be adjudged to the respondent in error. You are hereby cited to appear, (if you see cause,) at the said Supreme Court, at the time and place aforesaid, to answer to the said writ of error and the errors assigned by the said Richard Smith, lessee of Edward Livingston, and also lessee of John Nicholson, James Nicholson, George W. Morgan and Sarah his wife, in right of the said Sarah, Duncan Hennen, an infant, by Alfred Hennen, his next friend, and Hannah Nicholson, an infant, by the said John Nicholson, her next friend.

Given under my hand and seal this eighth day of January, in the year of our Lord one thousand eight hundred and thirty-one.

JOS. HOPKINSON. [SEAL.]

Served on James C. Biddle, esquire, attorney on record, for the defendants, 10th Jan., 1831. So answers

JOHN CONARD, *Marshal.*

Pleas before the honorable the judges of the circuit court of the United States in and for the district of Pennsylvania, in the third circuit at Philadelphia, of October session, in the year of our Lord one thousand eight hundred and twenty-eight.

It is thus contained:

William Stiles, late of the district of Pennsylvania, yeoman, a citizen of the State of Pennsylvania, was attached to answer Richard Smith, a citizen of the State of Louisiana, of a plea wherefore he entered into one messuage ten hundred acres of woodland, ten hundred acres of arable land, ten hundred acres of meadow land, ten hundred acres of pasture land, and ten hundred acres of other land, with the appurtenances, of the value of five thousand dollars, situate and being in Cumberland county, in the commonwealth of Pennsylvania and in the district aforesaid; which Edward Livingston, a citizen of the State of Louisiana, had demised to the said Richard Smith, for a term which is not yet expired, and which John Nicholson, James Nicholson, George W. Morgan, and Sarah his wife, in right of the said Sarah, Duncan Hennen, an infant, by Alfred Hennen, his next friend, and Hannah Nicholson, an infant, by the said John Nicholson, her next friend, all citizens of the State of Louisiana, had also demised to the said Richard Smith, for a term which is not yet expired, and ejected him from his said farm, and other wrongs to him did, to the great damage of the said Richard and against the peace of the United States. And thereupon the said Richard, by Benjamin Tilghman and Charles J. Ingersoll, his attorneys, complains, that whereas the said Edward Livingston, on the first day of January, in the year of our Lord one thousand eight hundred and twenty-eight, at the district aforesaid, had demised to the said Richard the tenements aforesaid, with the appurtenances, to have and to hold the same to the said Richard and his assigns, from the day next immediately preceding the day aforesaid, for and during, and unto the full end and term of twenty years thence next ensuing, and fully to be complete and ended. And also, whereas the said John Nicholson, James Nicholson, George W. Morgan, and Sarah his wife, in right of the said Sarah, Duncan Hennen, an infant, by Alfred Hennen, his next friend, and Hannah Nicholson, by the said John Nicholson, her next friend, on the first day of January, in the year of our Lord one thousand eight hundred and twenty-eight, at the district aforesaid, had demised to the said Richard the tenements aforesaid, with the appurtenances, to have and to hold the same to the said Richard and his assigns, from the day next immediately preceding the day aforesaid, for and during and unto the full end and term of twenty years thence next ensuing and fully to be completed and ended; by virtue of which said several demises the said Richard entered into the said tenements, with the appurtenances, and was thereof possessed; and the said Richard being so thereof possessed, the said William, afterwards, to wit, on the said first day of January, in the year of our Lord one thousand eight hundred and twenty-eight, with force and arms, &c., entered

277

into the said tenements, with the appurtenances, which the said Edward Livingston, and the said John Nicholson, James Nicholson, George W. Morgan, and Sarah his wife, in right of the said Sarah, Duncan Hennen, an infant, by his next friend, Alfred Hennen, and Hannah Nicholson, an infant, by the said John Nicholson, her next friend, had severally demised to the said Richard in form aforesaid, for the term aforesaid, which is not yet expired, and ejected him out of his said farm, and other wrongs to him did, to his great damage and against the peace of the United States: whereupon the said Richard saith he is injured, and hath sustained damage to the value of five thousand dollars; and thereof he brings suit.

And the aforesaid William Stiles, by James C. Biddle, esquire, his attorney, comes and defends the force and injury, when &c., and saith that he is in nowise guilty of the trespass and ejectment aforesaid, as the said Richard Smith above complains against him, and thereof he puts himself upon the country, and the said Richard Smith does the same. Therefore let a jury thereupon come before the judges aforesaid, at Philadelphia aforesaid, on the eleventh day of April next, who neither, &c., to recognize, &c., because as well, &c. The same day is given to the parties aforesaid, then and there, &c.

On which said eleventh day of April, in the year of our Lord, one thousand eight hundred and twenty-nine, come the parties aforesaid, by their attorneys aforesaid, and further day is given to the parties aforesaid, until the eleventh day of October next. Therefore, as before, let a jury thereupon come before the judges aforesaid, at Philadelphia aforesaid, on the eleventh day of October next, who neither, &c., to recognize, &c., because as well, &c. The same day is given to the parties aforesaid, then and there, &c.

On which said eleventh day of October, in the year last aforesaid, come the parties aforesaid, by their attorneys aforesaid, and afterwards, in this same session, to wit, on the twenty-sixth day of October, in the year last aforesaid, the jurors of the jury aforesaid, being called, likewise come, to wit, Elhanan W. Keyser, Charles Marshall, Joseph Paul, Abraham L. Pennock, James Poultney, Israel Roberts, Lewis Ryan, Charles Remington, Francis G. Smith, William S. Smith, Dexter Stone, Alexander Symington, who are duly empannelled, returned, chosen, tried, and sworn, or affirmed, to speak the truth of the matter within contained; and thereupon John Moore, John D. Mahon, Barnet Aughenbaugh, David Reynolds, and William Scott, who, by a rule of this court, were heretofore made defendants in this cause and entered into the common rule, refused to confess the lease, entry, and ouster laid in the declaration. Whereupon the plaintiff, being unable to prove the same, became nonsuit, so far as relates to the said John Moore, John D. Mahon, Barnet Aughenbaugh, David Reynolds, and William Scott. Therefore it is considered by the court here, that the said Richard Smith do recover against the said William Stiles his term aforesaid yet to come, of and in the tenements aforesaid, with the appurtenances, together with his costs and charges by him about his suit in this behalf expended, &c.

Afterwards, to wit, on the second day of November, in the year of our Lord one thousand eight hundred and thirty, at a session of the same court, holden at Philadelphia aforesaid, before the judges aforesaid, come the parties aforesaid, by their attorneys aforesaid, and they file an agreement in writing in the said court, which said agreement is in the words and figures, and of the tenor following, that is to say:

Lessee of NICHOLSON & LIVINGSTON vs. MOORE, MAHON, et al. } Circuit Court of the United States, Eastern District of Pennsylvania.

Terms upon which the judgment in the above case shall be opened, and the defendants let into a defence.

1. As both parties claim under John Nicholson, the title to the premises shall be admitted to have been in him, unless divested by the alleged lien and proceedings of the State of Pennsylvania, under which the defendants have title.

2. The proceedings of the State of Pennsylvania, under which a sale of the whole or a part of the premises was made, shall be set up as a defence by the defendants, and the question, whether the title of John Nicholson and his heirs was divested by those proceedings, shall be brought forward and submitted to the court upon its merits.

3. The cause shall be peremptorily tried at the next term.

4. The party against whom the judgment is given, shall, within one month thereafter, take out a writ of error to the Supreme Court of the United States, which writ of error shall, by consent, be taken up out of its order whenever there is an opportunity to have it heard, and this agreement shall be presented to the said Supreme Court in order to authorize the taking up the said writ of error, although in the absence of either party or their counsel.

Philadelphia, June 10th, 1830.

BENJ. TILGHMAN, *for Pl'ff.*
C. J. INGERSOLL, *for Pl'ff.*
JNO. D. MAHON,
JACOB M. HALDEMAN,
JOHN MOORE.

J. D. MAHON, *Attorney for all the defendants.*

Therefore, let a jury thereupon here immediately come before the said judges, who neither, &c. to recognize, &c. because as well, &c.

Afterwards in the same session, to wit: on the twenty-ninth day of November aforesaid, the jurors of the jury aforesaid being called, likewise come, to wit: Clement Bringhurst, Thomas Cave, Charles H. Evans, George Emerick, William H. Hart, Joseph Lukens, Jonathan Miller, Thomas Morris, John Moss, Abraham L. Pennock, John J. Parry, and William Redwood, who are duly empannelled, returned, chosen, tried, and sworn or affirmed to speak the truth of the matter within contained; and afterwards, to wit: on the sixteenth day of December, in the year last aforesaid, the jurors aforesaid, upon their oaths and affirmations aforesaid, respectively do say, that the said John Moore, John D. Mahon, Barnet Aughenbaugh, David Reynolds, and William Scott, are in no wise guilty of the trespass and ejectment aforesaid, as the aforesaid Richard Smith above, by pleading, has alleged.

Therefore, it is considered by the court here, that the said Richard Smith take nothing by his declaration aforesaid; but for his false complaint, be in mercy, &c. and that the said John Moore, John D. Mahon, Barnet Aughenbaugh, David Reynolds, and William Scott, go thereof, without day, &c.

And it is further considered, that the said John Moore, John D. Mahon, Barnet Aughenbaugh, David Reynolds, and William Scott, recover against the said Richard Smith the sum of forty-nine dollars and fifty-five cents, for

their costs and charges by them expended in their defence in this behalf sustained, to the said John Moore, John D. Mahon, Barnet Aughenbaugh, David Reynolds, and William Scott, now here adjudged, &c. and that the said John Moore, John D. Mahon, Barnet Aughenbaugh, David Reynolds, and William Scott, may have execution thereof, &c.

UNITED STATES, DISTRICT OF PENNSYLVANIA, sct.

I certify the foregoing to be a true and faithful copy of the record of the judgment of the circuit court of the United States in and for the district of Pennsylvania in the third circuit, in a certain action of trespass and ejectment therein lately depending between the lessee of Edward Livingston and of John Nicholson, James Nicholson, George W. Morgan, and Sarah his wife, in right of said Sarah, Duncan Hennen, an infant, by Alfred Hennen, his next friend, and Hannah Nicholson, an infant, by said John Nicholson, her next friend, plaintiffs; and John Moore, John D. Mahon, Esq. Barnet Aughenbaugh, David Reynolds, and William Scott, defendants.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said court at Philadelphia, this eighth day of January, one thousand eight hundred and thirty one, and in the fifty-fifth year of the Independence of the said United States.

D. CALDWELL, *Cl'k Circuit Court.* [L. S.]

Be it remembered, that to the October sessions, 1828, of the circuit court of the United States, for the Pennsylvania district, came Richard Smith, a citizen of the State of Louisiana, lessee of Edward Livingston, and also lessee of John Nicholson, James Nicholson, George W. Morgan, and Sarah his wife, in right of said Sarah, Duncan Hennen, an infant, by Alfred Hennen, his next friend, and Hannah Nicholson, an infant, by the said John Nicholson, her next friend, all citizens of the State of Louisiana, by their attorneys, Benjamin Tilghman and C. J. Ingersoll; and impleaded William Stiles, a citizen of the State of Pennsylvania, with notice to John Moore, John D. Mahon, Esq. Barnet Augenbaugh, David Reynolds, and William Scott, tenants in possession, who appeared by their attorneys, James C. Biddle and Samuel Douglass, esquires, in an action of ejectment: wherein such pleadings and proceedings took place, that the issue formed came to be tried on the 29th day of November, 1830, at an adjourned sessions of the said circuit court, held at the city of Philadelphia, in the said district, by and before the Honorable Joseph Hopkinson, one of the judges of the said court, and a special jury, duly empannelled, to try the said issue: whereupon, to maintain and prove the same on their parts, the plaintiffs read in evidence, the following acts of the General Assembly of the Commonwealth of Pennsylvania, viz:

An act, dated 31st of March, 1806, entitled "An act for the more speedy and effectual collection of certain debts due to this Commonwealth."

An act, dated the 19th of March, 1807, entitled "A supplement to an act for the more speedy and effectual collection of certain debts due to this Commonwealth."

An act, dated the 13th of April, 1782, entitled "An act for methodising the department of accounts of this Commonwealth, and the more effectual settlement of the same."

An act, dated the 18th of February, 1785, entitled "An act to give the benefit of trial by jury, to the public officers of this State, and other per-

sons who shall be proceeded against, in a summary manner, by the comptroller general of this State."

The plaintiffs also gave in evidence the action, entries, judgment, and agreement, in a certain suit brought to September term, 1795, in the supreme court of Pennsylvania, by the Commonwealth of Pennsylvania, against John Nicholson; and the said action, entries, judgment, and agreement, were in the words and figures following, viz:

Pleas before the honorable Thomas McKean, esquire, doctor of laws, chief justice, and his associates, justices of the supreme court of the commonwealth of Pennsylvania, of the term of September, 1795.

PHILADELPHIA COUNTY, ss.

John Nicholson, late of the county aforesaid, yeoman, was attached to answer the commonwealth of Pennsylvania, of a plea of trespass on the case, &c.; and thereupon the said commonwealth, by Jared Ingersoll, its attorney, complains: that whereas the said commonwealth, on the first day of August, in the year of our Lord one thousand seven hundred and ninety-five, at Philadelphia, in the county aforesaid, was possessed of certain certificates and stock of the United States, to wit: Continental certificates, amounting to fifty-one thousand two hundred and nine dollars and twenty-two cents; three per cent. stock of the United States, amounting to sixty-three thousand seven hundred and thirty-one dollars and sixty-three cents, and funded debt certificates, amounting to nine thousand five hundred and sixty-seven dollars and ninety cents, as of its own proper goods and chattels; and being so thereof possessed, the said commonwealth afterwards, to wit: the day and year aforesaid, at Philadelphia, in the county aforesaid, the said certificates and stock out of their hands and possession did casually lose, which same certificates and stock afterwards, to wit: the same day and year aforesaid, at the county aforesaid, to the hands and possession of the said John, by finding, did come; nevertheless, the said John *having* the said certificates and stocks to be the property of the said commonwealth, but contriving and fraudulently intending the said commonwealth of the certificates and stock aforesaid, craftily and subtily to deceive and defraud the said certificates unto the said commonwealth, although often required, hath not delivered; but the said John Nicholson the said certificates and stock afterward, to wit: on the same day and year aforesaid, at the county aforesaid, unto his own proper use did convert and dispose, whereby the said commonwealth saith it hath damage to the value of one hundred and fifty thousand dollars, and therefore he brings suit, &c.

Continued, December term, 1795.

Continued, 25th of January, 1796.

Defendant, John Nicholson, by James Gibson, esquire, his attorney, pleads non-cul, with leave to alter and issues.

March, September and December, 1796—Continued.

And now, to wit: 21st March, 1797, at a supreme court held at Philadelphia, for the commonwealth of Pennsylvania, present, chief justice McKean, and judges Shippen, Yates, and Smith.

A jury being called, came, to wit: James Stranbridge, John Steinmutz, Robert Ralston, Joseph Snowden, Jeremiah Parker, John Godfrey Wrachsmuth, William Kenley, John Salter, John Singer, Emanuel Walker, Charles Mossey, and Seth Willis, who being duly empannelled, returned,

279

tried, sworn, and affirmed.—Judgment according to the following agreement filed.

Twenty-first of March, 1797, by agreement filed, the judgment is for the sum of one hundred and ten thousand three hundred and ninety dollars eighty-nine cents, rating the stock as follows: six per cent. at 16*s.* 9*d.* in the pound; three per cent. at 10*s.*; militia certificates at 50 per cent.; and that, in the set off, the stock be allowed at the same rate; the defendant be allowed three months to point out any errors to the satisfaction of the comptroller and register general, such errors to be deducted from the sum for which judgment shall be entered. Certificates and receipts to be credited also, with the charges of the funded debt. Errors against the commonwealth, if any, also to be corrected. The sum for which judgment is now entered, to be altered by the subsequent calculation of the comptroller general alone. Supreme court, costs taxed at $ 35 35.

I, Joseph Barnes, prothonotary of the supreme court of the eastern district of Pennsylvania, do hereby certify that the foregoing contains a true transcript of the record of a judgment of the supreme court of the commonwealth of Pennsylvania, as the same remains of record in my office.

JOS. BARNES, *Prothonotary.*

The said plaintiffs also read in evidence the following acts of the general assembly of Pennsylvania, viz:

An act, dated the 28th March, 1789, entitled "an act for the appointment of a register general, for the purpose of registering the accounts of this State."

An act, dated the 1st of April, 1790, entitled "an act to enforce the due collection of the revenues of this State, and for other purposes therein mentioned."

An act, dated the 14th January, 1791, entitled "an act transferring certain powers exercised by the late president and supreme executive council to the governor of this commonwealth."

An act, dated the 14th of April, 1791, entitled "an act to transfer certain powers formerly exercised by the supreme executive council, also by the president or vice-president thereof, to the Governor of this commonwealth."

An act, dated the 21st of September, 1791, entitled "an act to continue the act transferring certain powers formerly exercised by the supreme executive council, also by the president or vice-president thereof, to the governor of this commonwealth."

An act, dated the 22d of April, 1794, entitled "an act for vesting the powers formerly exercised by the supreme executive council in the proper departments, under the present constitution of this commonwealth.'

An act, dated the 4th of April, 1792, entitled "an act for the settlement of public accounts, and for other purposes therein mentioned."

An act, dated the 4th of April, 1796, entitled "An act for making appropriations, and for other purposes therein mentioned."

An act, dated the 5th of April, 1797, entitled "An act making appropriations and to enjoin certain duties on the comptroller general, register general, and state treasurer, as well as for other purposes therein mentioned."

An act, dated the 4th of April, 1798, entitled "An act to make certain appropriations as well as for other purposes therein mentioned."

An act, dated the 11th of April, 1799, entitled "An act to authorize the governor to procure on loan the sum of one hundred thousand dollars; to suspend for a limited time the act to provide arms for the use of this commonwealth, passed the 28th of March, 1797; further to provide for the settlement of the accounts of the brigade inspector; to make certain appropriations; and for other purposes."

The plaintiffs then offered in evidence the journal of the house of representatives of the commonwealth of Pennsylvania, of the 22d March, 1796, to prove by it that the same sums and the same stock, the amount of which is claimed under the alleged liens of the commonwealth, were the subject matter of, and embraced in the suit brought by the commonwealth against John Nicholson, the record of which had been read, insisting that the same is competent evidence under the agreements in this case. On being asked what portion of the journal it was proposed to read, the plaintiffs answered that they offered in evidence, and proposed to read "No. 21, a statement of the debts due to the commonwealth on the 1st day of January, 1797," being the document referred to in the official report made to the house by the register general, and being one of the papers in the appendix to said journal—prout journal and appendix; but the defendants' counsel objecting to the admissibility of the evidence as incompetent for such purpose, it was rejected by the court, and the rejection thereof excepted to by the plaintiffs.

The plaintiffs also offered in evidence the journal of the house of representatives of Pennsylvania to shew the report of the committee of ways and means made the 24th of March, 1798, for the purpose of shewing the allegation made in that report, to prove that the judgment obtained against John Nicholson was for continental and new loan certificates received by him as the property of the State, which was also objected to as incompetent evidence for that purpose, and rejected as such by the court, and the rejection thereof excepted to by the plaintiffs.

The plaintiffs also offered in evidence the appendix to another report of the committee of ways and means of the house of representatives of Pennsylvania, to be read from their journal, dated the 30th of March, 1799, page 386, concerning the accounts of the late comptroller general, John Nicholson, being a document referred to in the report of the register general, which expressed that the accounts of the said John Nicholson with the commonwealth, were not then settled; which being objected to, was rejected by the court as incompetent, and the rejection thereof also excepted to by the plaintiffs.

The plaintiffs then examined as a witness Alexander M. Piper, who, being duly sworn, testified as follows: "The papers produced were given in charge to me by the auditor general to bring here under a subpœna. They came out of his office. I am not acquainted with the handwriting of Samuel Bryan, but received the papers from Mr. Sturgeon, the auditor general."

The plaintiffs then gave in evidence the said subpœna, and the same was read as follows, to wit:

UNITED STATES, DISTRICT OF PENNSYLVANIA, sct.

The President of the United States to Daniel Sturgeon and Alexander Mahon, esquires, greeting.

We command you, that laying aside all manner of business and excuses whatsoever, you, and each of you, personally be and appear before the judges

of the circuit court of the United States, in and for the district of Pennsylvania, in the third circuit, at a session of the same court, to be holden at the city of Philadelphia, on Monday, the 29th day of November instant, at eleven o'clock, A. M., then and there to testify all and singular, those matters and things which you shall know in a certain action now depending in the said court, and undetermined between the lessee of Edward Livingston and others, plaintiffs, and John Moore, John D. Mahon, esquires, Barnet Aughenbaugh, David Reynolds, and William Scott, defendants, on the part of the said plaintiffs; and we command you that you bring with you the following papers, books, documents, and vouchers, to wit:

In the office of Daniel Sturgeon, esquire, the present Auditor General of the State.

The 1st, headed "Dr. John Nicholson in account in continental certificates with the State of Pennsylvania, creditor," showing a balance to na. against John Nicholson of $58,429 $\frac{24}{100}$, signed by Samuel Bryan, March 8, 1796, and by John Donaldson, March 3d, 1796, or any other accounts of the said dates between the said parties.

The 2d, headed "Dr., John Nicholson account in continental certificates with the State of Pennsylvania, creditor, "showing a balance to na. against John Nicholson of $51,209 $\frac{22}{100}$, signed by Samuel Bryan, December 20th, 1796, and by John Donaldson December 22d, 1796, or any other account of the said dates between the said parties.

The 3d headed "Dr. John Nicholson account 3 per cent. stock of the United States, in account with the Commonwealth of Pennsylvania, creditor," showing a balance against John Nicholson of $63,729 $\frac{86}{100}$, signed by Samuel Bryan, December 20, 1796, June 30, 1800, and by John Donaldson December 20, 1796; whereupon is also written "N. B. This account was settled in December, 1796, but not entered in the books 'till 30th June, 1800."

4th. A paper headed in the manner of No. 2, as above described, showing the same balance, signed by John Donaldson November 19th, 1796, and endorsed thereon "commonwealth *vs.* John Nicholson, September, 1795."

5th. A paper headed in the manner of No. 3 above described, showing a balance against John Nicholson, of $63,731 $\frac{6}{100}$, signed John Donaldson, November 19th, 1796.

In the office of Alexander Mahon, esquire, the present treasurer of the State:

1st. The comptroller general's leger or legers shewing the following ballances against John Nicholson, in 1796, and subsequently:

1st. Account of continental certificates, - - - $51,209 22
2d. Account of 3 per cent. stock of the United States - 63,729 69
3d. Entry of September, 1807, by general revenues - - 4,850 00
4th. Entry to the credit of John Donaldson, June 19, 1802, as received from John Nicholson - - - £4,247 8 6
5th. Also the journal or journals, or other books containing the above original entries.
6th. Also the ledger, together with the original book of entry, showing a balance in favor of John Nicholson, on account of depreciated certificates of - - - - 5,551 2 10

And hereof fail not under the penalty of four hundred dollars for each of you.

Witness the honorable John Marshall, Chief Justice of the Supreme

Court of the United States at Philadelphia, this fifteenth day of November, A. D. 1830, and in the fifty-fifth year of the Independence of the said United States.

D. CALDWELL, *C. C. C.* [L. S.]

I acknowledge that the within subpœna was served on me by R. T. Luck, esq., on the 22d instant.

A. MAHON, *State Treas.*

22d November, 1830.

I acknowledge the service of the within by Richard T. Luck, November 22, 1830.

DAN. STURGEON.

The plaintiffs also gave in evidence the three papers or accounts first mentioned in the said subpœna, and produced by the said witness as follows, to wit:

It being admitted that the words, parts of words, and figures, following in the third of them, were in the hand writing of Samuel Bryan, esq., register general, that is to say:

"Sett. and ent.

SAMUEL BRYAN,
Reg. Gen. Office, Decemb. 20th, 1796."

And that the word and figures "30 June, 1800" were not in his hand writing, but were in the same hand writing as the N. B., *endorsed* on the said account.

JOHN NICHOLSON account in Continental Certificates with the State of Pennsylvania.

DR. CR.

To amount received from Francis Johnson, esquire, receiver general, for lands sold for account the State - - -	$ 877,131 50	
To amount in new loan certificates, for which he had an equal amount in continental certificates - - -	315,920 86	
To balance of new loan certificates, for which he hath an equal sum in continental certificates, per account No. 1, £34,960 7.10, is - - - - -	93,227 71	
Do. in the depreciated new loan certificates, reduced by the scale - - - - - 5,931 1.6		
*40,891 9.4	9,613 44	
To sundry certificates reported by him as received for the use of the State from Woods, Scott, and Thompson, per his report - - - - - 430 05		
Francis Wade - - - - 5,782 23		
	6,212 28	
	1,302,105 79	

Settled and entered.
SAML. BRYAN.
REGISTER GENERAL'S OFFICE, *March 8th*, 1796.

By amount continental certificates delivered the Treasurer, by his account:			
1st delivery - - -	302,643 89.2		
2d do - - -	355,591 27.1		
3d do - - -	386,898 21		
4th do and last - -	48,050 10.6		
	1,093,183 58	$1,093,183 67	
By stock transferred by John Nicholson, at the Treasury of United States:			
1st 6 p - - -	63,453 68		
2d do - - -	10,318 93		
	73,772 61		
1st defer'd - 31,726 85			
2d do - 5,159 47			
	36,886 32		
		110,658 93	
By stock paid C. Febiger for Caldwell Thompson, Beer and Stein, lost certificates - - - -		10,298 09	
By John Donaldson account continental certificate received of him - - - - -		29,486 74	
By C. Febiger account continental certificates; for this sum he received at the Treasury of the United States more than he was charged with - - -		49 12	
By n-a balance - - - -		58,429 24	
		1,302,105 79	

Settled and entered.
JOHN DONALDSON.
COMPTROLLER GENERAL'S OFFICE, *March 3d*, 1796.

* Number uncertain.

13

297

JOHN NICHOLSON account in Continental Certificates with the State of Pennsylvania.

Dr.		Cr.	
To balance account settled March, 1796	58,429 24	By received of him March, 1796	4,220 02
		By do September	3,000 00
To balance due	51,209 22	By balance to account	51,209 22
			58,429 24
6 per cent.	34,139 48		
Deferred	17,069 74		
	51,209 22		

Settled and entered.
SAML. BRYAN.

REGISTER GENERAL'S OFFICE, *December 20th*, 1796.

Approved and entered.
JOHN DONALDSON.

COMPTROLLER GENERAL'S OFFICE, *December 22d*, 1796.

JOHN NICHOLSON account 3 per cent. stock of the United States, in account with the Commonwealth of Pennsylvania.

DR.

To interest calculated on the continental certificates received in the land office from their respective dates of interest till 31st December, 1790, inclusive; likewise on the new loan certificates received in do. for which he had an equivalent in continental certificates -		$575,670 80
To interest on certificates received from Francis Wade, for the use of the State, per his account thereof	3,781 69	
Do. on Wood, Scott, and Thompson, per do.	212 22	
		3,994 01
To sundry interest given up by officers, per his own report - - - - - -	2,077 29	
Do. arrearages relinquished by the parties in exchange - - - - - -	879 34	
		2,956 70
To balance of interest endorsed on the redeemed certificates, for which he had or received an equivalent in indents and 3 per cent. stock per statement - - -		1,171,931 00
To interest calculated on the unredeemed new loans, per list No. 1 - - - - -	43,977 94	
No. 2 - - - - -	6,841 73	
		50,819 67
		1,805,372 18
To balance from account - - - - -		66,449 04
To balance due the State in 3 per cent. stock, bearing interest from January 1st, 1790 - - - - -		63,727 86

(*Endorsement.*) N. B. This account was settled in December, 1796, but not entered on the books till 30th June, 1800.

Sett. and ent.

SAML. BRYAN.

REGISTER GENERAL'S OFFICE, *June 30th*, 1800.
Decemb. 20, 1796.

CR.

By indents received on continental certificates, and paid to D. Rittenhouse, and afterwards paid to the United States	212,455 33	
Do. to C. Febiger, and by him to do.	8,019 42	
		$220,474 75
By interest on certificates paid to C. Febiger, including those paid for Lake Erie purchase - - - - -		520,687 64
By indents paid C. Febiger at sundry times - -		843,851 33
By interest on the certificates of Caldwell and others paid over to the treasurer - - - - - -		4,563 98
By 3 per cent. stock paid the treasurer from certificates subscribed by J. Nicholson at sundry times - -		68,787 09
By do. in 3 per cent. stock transferred by the parties in lieu of indents at different times, in exchange of new loans -		41,776 49
By do. in stock subscribed by J. Nicholson - -		4,319 63
By indents - - - - - - -		20,451 34
By interest on certificates paid to J. Donaldson, his successor in office - - - - - -		14,310 89
Balance to new account - - -		66,449 04
		1,805,372 18
By interest on certificates received of him March, 1796		1,398 18
By do. on a do September, 1796		1,321 00
Balance to n-a - - - -		63,729 86
		$66,449 04

Examined and entered.

JOHN DONALDSON.

COMPTROLLER GENERAL'S OFFICE, *December 20th*, 1796.

15

282

The plaintiffs also offered in evidence the comptroller general's leger C, beginning in 1794, and coming to 1809, and, as introductory thereto, further examined Alexander M. Piper, who deposed as follows, viz: I have brought the original books from the Treasury office. I have brought the comptroller general's leger C, and one journal called the comptroller general's journal, one day-book or blotter, and an index to the leger, and two extracts from another journal, which is posted into that leger, all brought under the subpœna. These books were pointed out in the subpœna, and Mr. Farrand was there on Thursday last: they are not all the books called for by the subpœna. To save the trouble of bringing another very large journal, Mr. Farrand agreed we should take the two short extracts from it. Mr. Farrand proposed that the extracts should be substituted for the book. I compared the extract with the journal. I understood Mr. Farrand was at Harrisburg as the agent of the plaintiffs. I do not know when the book was make up. It was before the year 1822, when I came into that department. I dont know the hand writing. One journal and one day-book, from which the leger was made up are here. There are two other journals comprised in the leger not here. There are also balances of accounts brought into this leger, stated to be from the register general's leger. The leger is not a precise transcript from the journal, but gross amounts are brought into it in a brief manner. The custom of the office is to post once a month. The leger ought to contain the true result, although not the several items. I have not examined the various entries in the original books from whence this journal was made; have examined some of them, but not generally. The journal now here begins 22d April, 1794, goes to December, 1798. Mr. Farrand had access to the books, to examine them before it should be decided what should be brought, and what should not. The State Treasurer has been unwell for two months. He has been occasionally at the office in the last two weeks. I am a book clerk in that office, having charge of the books. There was no reason, that I am aware of, for not bringing the whole of the books, except the inconvenience of the carriage. The journal that is here contains the greater part of the entries, at least, greatly more than the other journal. I made no comparison between the ledger and the other journals, to see if the entries are properly brought forward. I extracted from the journal, not here, all the entries which Mr. Farrand pointed out as material. I do not know for what purpose the leger here was made out, unless for keeping up the accounts. This is the first leger in the office of the Treasury since then carried on regularly. I dont know when it was commenced. When in making out an account, we could not close it, we carried the balance into general account. In the general account contained in the leger now here, there are entries of great amounts referring to the two journals not here, from page 724 to 2000 and upward. In the account in the leger, John Nicholson is debited with a large amount "to general account," and "general account" is credited by John Nicholson, or the reverse; and there are references in both accounts to pages in the journal after 724. But the counsel for the defendants objected to the said leger C, as incompetent evidence, and the court rejected the same. But no exception was taken to such rejection.

The plaintiffs further gave in evidence a testatum fieri facias, issued under the judgment herein before set forth, dated the 21st of March, 1797, in the action of the commonwealth against John Nicholson, which testatum fieri facias issue to Lycoming county, returnable to March term, 1798. Real

debt $110,390 89/100 interest from 21st of March, 1797. Levied upon 434 tracts of land, of 400 acres each, two equal third parts of 700 acres, one million of acres held for the Asylum Company, and three tracts, containing together 1268 acres; all taken in execution as the property of John Nicholson, at the suit of the commonwealth, subject nevertheless to five prior liens, two at the suit of D. Smith, two at the suit of H. Donnell, and one at the suit of John Field; which execution was returned, "levied, inquisition held and condemned, sale countermanded," September term, 1803, venditioni exponas to Lycoming county: returned "sale countermanded."

Testatum fi. fa. to Huntington county; tarde venit.

Testatum fi. fa. to Wayne county; came too late.

Testatum fi. fa. to Northampton county; returned nulla bona.

Testatum fi. fa. to Delaware county; returned proceedings stayed by plaintiffs order.

Testatum fi. fa. to Montgomery county; returned nulla bona.

Testatum fi. fa. to Westmoreland county, returned nulla bona.

Testatum fi. fa. to Luzerne county; returned not executed by order of Samuel Bryan, Esq.

Testatum fi. fa. to Alleghany county; came too late.

Testatum fi. fa. to Berk's county; nulla bona.

Testatum fi. fa to Somerset county; nulla bona.

Testatum fi. fa. to Fayette county; levied on real estate, inquisition and condemned.

Venditioni exponas, September term, 1804, to Fayette county; not returned.

The plaintiffs also gave in evidence from the docket entries, the two judgments of D. Smith against John Nicholson, the two judgments of H. Donnell against John Nicholson, and the judgment of John Field against John Nicholson, in the Supreme Court of Pennsylvania, in which testatum executions issued to Lycoming county, Pennsylvania, returnable to March term, 1798, levied on 108 tracts of land, inquisition held and condemned.

The plaintiffs also gave in evidence, from the docket entries of the Supreme Court of Pennsylvania, judgments by James C. Fisher, —— Reese, Robert Westcott, Hollingsworth, and many others, against John Nicholson, between the 3d day of March, 1796, and the judgment against him at the suit of the commonwealth of Pennsylvania, on the 21st of March, 1797.

It was stated and agreed that John Nicholson resigned the office of comptroller general of Pennsylvania on the 11th of April, 1794, and that he died in December, 1800, in prison, where he was confined in execution at the suit of an individual creditor or creditors.

The plaintiffs also gave in evidence a warrant under the seal of the commonwealth of Pennsylvania, dated the 24th of March, 1794, addressed to Daniel Broadhead, Esq. surveyor general, requesting him to survey unto Grace Binney four hundred acres of land, adjoining land that day granted to Susan Binney, in the county of Franklin, together with the survey and draft thereof, dated the 16th of August, 1794, and the return of the said survey into office, dated the 6th of April, 1796; also, similar warrants, surveys, and returns for several other tracts of adjoining lands in the names of the several warrantees, being the body of lands for which this ejectment is brought, and the testimony of Joshua Dickinson taken by written desposition as follows, to wit:

Joshua Dickinson, a witness on the part of the lessors of the above plain-

tiffs, being duly sworn according to law, doth depose and say, that he has been secretary of the land office of Pennsylvania for more than five years last past, and that he now holds that office; that he has been in the habit of transacting business with the land office since the year 1809; and since his appointment to the said office, he has been conversant with the usages and customs of the said land office, both as they now exist and as they appear upon its books and records, which are in his custody. Among other documents and records belonging to, and of record in the said office of secretary of the land office, is a voucher called old purchase, voucher No. 12,968, a copy of which was certified by this deponent under his seal of office, on the 10th day of April, 1829, which copy is now before him, known to be accurate, and marked as document A., referred to in this his deposition; as is also certified in the same way under date of the 9th of September, 1829, a copy of an entry in the old purchase, blotter No. 5, now remaining in the office of the secretary of the land office of Pennsylvania, which is also numbered 12,968, now before him, and also known to be accurate. From the experience obtained by the deponent before he came into the said office, and his knowledge of the usage of the same heretofore, as acquired by him since he has become secretary thereof, he is enabled to say, that the said two documents so copied and numbered respectively No. 12,968, taken in connexion, furnish the proof, and the only proof existing so far as the knowedge of the deponent extends, of who the individual was who paid the purchase money for the warrants taken out in the names of the persons whose names are used as warrantees in the said voucher called old purchase, voucher No. 12,968. According to the knowledge and experience of this deponent, the said combined document numbered 12,968, according to the usage and custom of the land office, furnish proof that the warrants described therein were paid for by John Nicholson at the time of the said blotter entry. It has been the custom of the office, and still is the custom thereof, so far as the deponent knows, to give certified copies of vouchers and entries, such as the above, in order to shew who paid the purchase money for warrants described in such vouchers. Richard M. Crane is now the deputy secretary of the land office under the deponent, who knows him to have occupied the same station under John Cochran, Esq. the former secretary, during the time of Governor Snyder, and to have been employed in the land office so long ago as the year 1810. He is now absent, as the deponent understands and believes, in consequence of the illness and subsequent death of his brother-in-law, Robert Whitehill, in Green county, Pennsylvania.

Joshua Dickinson, document A, mentioned by Joshua Dickinson, and referred to in his deposition as old purchase, voucher No. 12,968, is certified by him to contain copies of sixty-one pages, remaining on file in the office of the secretary of the land office of Pennsylvania; being a list of warrants for John Nicholson, containing among others the nine warrants in suit.

The other document referred to in the deposition of Joshua Dickinson is as follows, to wit: " 12,968,—1794, June 14th. J. Nicholson, 513 w'ts, am't 203,560 ac's, at 50 ss. paid in check 14,254,=£5,089; fees 256 10 pd. rem'g ch 1,200 for 509 w'ts dd; these w'ts remain to be made out, except four, which were wrote. S. Bard, 8 Jan., '95 "

The plaintiffs also gave in evidence a certificate from the bank of Pennsylvania, stating that there appears a charge in the books of the bank of Pennsylvania to John Nicholson's account, on the 18th of June 1794, the sum of $14,254 dollars.

The plaintiffs also gave in evidence the testimony of Martha Moulder, taken by written deposition as follows, to wit:

Martha Moulder, of the northern liberties of the city of Philadelphia, a witness on the part of the plaintiffs, produced, sworn, and examined, by virtue of the rules and notices in the above cases hereunto annexed, doth depose and say; that she is about the age of fifty-four years; that her maiden name was Martha Duncan, and that she was the full sister of Hannah Nicholson, who was the wife, and afterwards the widow, of the late John Nicholson, formerly an officer of the government of Pennsylvania. The deponent lost her mother when very young, and soon after the intermarriage of her sister Hannah with the said John Nicholson she was taken into their house and family, where she resided with them, from the time of their marriage, in the year 1782, until her marriage in 1791, during all which period, and subsequently up to the present time, she has had an intimate knowledge of the said family, their connexions, and the deaths of such as are deceased. Hannah Nicholson, my sister, from the time of my mother's death, when I was but eighteen months old, supplied to me the place and care of a mother. The said John Nicholson had but one wife, viz. my sister Hannah. From her knowledge, imtimacy, and connexion with the family of the said John Nicholson and Hannah his wife, the deponent is able to state who were the children of the said John Nicholson and Hannah his wife, how many of them are dead, and which of them left descendants, and who such descendants are. A book is now produced to the deponent, which she knows to be the family bible of the said John Nicholson; it contains an accurate account, in the handwriting of the said John Nicholson, of his marriage, and the births and deaths of his children, entered upon a blank page, between the old and new testaments. The deponent identifies the said bible by writing her name at the first page thereof, as referred to in this her deposition. This bible the deponent well remembers from the time she was a young girl at school, at which time she recollects to have worked a cover for it. The said John Nicholson had the following children, viz:

1st. William Duncan Nicholson, who died about eleven years ago, unmarried; he was buried from the deponent's house.

2d. Anna Maria Nicholson, who intermarried with Alfred Hennen, of Louisiana, and who is since deceased, nearly about the same time as her brother William, leaving but one child, viz: Duncan Hennon, one of the plaintiffs.

3d. Seth Nicholson, who died unmarried about eight years ago.

4th. John Nicholson, now alive, the marshal of the United States' courts for the State of Louisiana, one of the plaintiffs.

5th. James Nicholson, who died an infant under a year old.

6th. James Nicholson 2d, now alive, resident in the State of Louisiana, one of the plaintiffs.

7th. Samuel Nicholson, who died about four years ago, leaving one child, viz. Hannah Nicholson, now a minor, residing with her uncle John Nicholson; her father also was a citizen of Louisiana.

8th. Sarah Nicholson, who is now alive and the wife of George W. Morgan, of the State of Louisiana.

9th. Joseph Sproat Nicholson, who died about the year 1818, unmarried, in South America.

For the respective ages of the several children of the said John Nichol-

son, the deponent refers to the said family bible. One of the deponent's brothers, viz. Matthew Duncan, intermarried with Eliza Nicholson, the only sister of the said John Nicholson, deceased. The intimacy, intercourse, and connexion between the families was always so constant as to keep the deponent well acquainted with the facts above stated.

Signed, MARTHA MOULDER.

The plaintiffs also gave in evidence the entries contained in the said family bible, as follows, viz:

John and Hannah Nicholson, married May 14, 1782.
William, born March 9, 1783.
Ann Maria, born February 17, 1785.
Seth, born September 1, 1786.
John, born September 20, 1787.
James, born October 23, 1788.
James 2d, born February 2, 1790.
Samuel, born February 27, 1791.
Sarah, born March 7, 1792.
Joseph Sproat, January 23, 1795.

The plaintiffs also gave in evidence the deposition of Samuel Blythe, with a draft annexed, proving that the defendants were in possession of the premises.

The plaintiffs then further examined as a witness Alexander M. Piper, who deposed as follows, viz. I have seen books in the office of the auditor general, which are designated as diaries of John Nicholson. There is a mass of papers there said to be Mr. Nicholson's, whether private or public I cannot tell. Mr. Farrand was in the office of the auditor general, where the papers are, for a considerable time; some months under permission of a resolution of the legislature; he was not there in the public service; don't know how the books and papers came there.

The plaintiffs further read in evidence an act of the general assembly of the commonwealth of Pennsylvania, passed on the 29th of March, 1802, entitled "An act authorizing the comptroller and register generals to receive certain evidences of State debt due to individuals in discharge of the sureties of the former comptroller John Nicholson."

The said defendants, to maintain and prove the issue on their parts, gave in evidence the original of the following document:

THE COMMONWEALTH OF PENNSYLVANIA.—*To all whom these presents shall come, greeting:*

Whereas, in pursuance of an act of the general assembly of this commonwealth, entitled "An act for the more speedy and effectual collection of certain debts due this commonwealth," passed the thirty-first day of March, one thousand eight hundred and six, and a supplement thereto, passed the nineteenth day of March, one thousand eight hundred and seven; it has been certified by Cadwallader Evans and Joseph Heister, esqrs., two of the commissioners appointed under the first mentioned act of general assembly, that, at a public sale of the lands, late the estate of John Nicholson, esq., deceased, subject to the lien of this commonwealth, held at Chambersburgh, in the county of Franklin, on the fifteenth day of July, 1807, a certain tract of land, situate on the south mountain in the said county, surveyed in pur-

suance of a warrant, dated the twenty-fourth day of March, 1794, in the name of Grace Binney, bounded and described as follows, viz: Beginning at a corner in a line of land of Mary Spring, and running by the same, south forty-four degrees east, three hundred and seven perches and three quarters, to a post at a corner in a line of Joseph Ogden's land; thence by the same and land of John Blanchard south forty-six degrees west, two hundred and seventy-five perches, to a post, a corner of Christopher Barting's land; thence by the same, north forty-four degrees west, one hundred and twenty-eight perches, to a chesnut; thence by land claimed by Samuel Blyth, the following courses, to wit, north seven degrees, west thirty-five perches and three quarters, north fifty-two degrees east twenty-eight perches, to a chesnut, north thirty-eight degrees west sixty-eight perches to a chesnut oak, north twenty degrees west fifty-eight perches to a pine, and north thirty-five degrees west forty-eight perches to a corner of Susan Binney's land; and thence by the same north forty-seven degrees and a half, east one hundred and ninety-seven perches and a half, to the place of beginning, containing four hundred and thirty-eight acres and seventy six perches of land and allowance, &c. was duly purchased, together with one other tract of 438 acres in the same county, by William Scott, of the said county of Franklin, for the sum of twenty-six dollars and twenty-nine and a half cents, lawful money.

Now, know ye, that, in consideration of the said sum of twenty-six dollars and twenty-nine and a half cents, by the said William Scott, to and for the use of the commonwealth, well and truly paid, before the ensealing and delivery of these presents, (as by the certificate of the State treasurer, duly authorized to receive the same, satisfactorily appears,) there is granted by the said commonwealth unto the said William Scott, his heirs and assigns, all and singular the herein before described tract of land, with the appurtenances, unto the said William Scott, his heirs and assigns, as and for such estate as the said John Nicholson had and held the same, at the time of the commencement of the liens of the commonwealth, against the estate of the said John Nicholson, to and for the only use and behoof of the said William Scott, his heirs and assigns forever.

In witness whereof, Thomas M. Thompson, esq., secretary of the said commonwealth, hath hereunto set his hand, and affixed the great seal of the State at Lancaster, this eighteenth day of March, in the year of our Lord one thousand eight hundred and eight, and of the commonwealth the thirty-second.

T. M. THOMPSON, *Secretary.*

Enrolled in the roll's office in patent-book No. 40, page 92, &c. Witness my hand and seal of office, this 25th day of March, A D. 1808.

For T. Matlack,
M. R. T. MATLACK, Jr.

The defendants also gave in evidence the original of the following document:

We, the undersigned commissioners, do certify that, on the 15th day of July, 1807, at a public sale of lands, late the estate of John Nicholson, deceased, upon which the State of Pennsylvania has a lien, held at Chambersburg, in the county of Franklin, John Stall, of Green township, in the county aforesaid, purchased one tract of land situate in the county aforesaid, on the south mountain, containing 438 acres and 62 perches, held under a

warrant granted to Susan Binney, March 24, 1794, for $87 67; to receive the payment of which, he has given bond, with approved security, to the State treasurer, and will be entitled to a deed from the secretary of the commonwealth upon the discharge of the deed.

Witness our hands, July 17, 1807.

JOS. HEISTER,
CADW. EVANS.

The defendants also read in evidence from the docket entries a judgment entered the 18th of December, 1795, for £4,208 8*s.* 8*d.* in an action by the commonwealth of Pennsylvania against John Nicholson, brought to September term 1793, in the supreme court of Pennsylvania.

The said defendants further examined as a witness Alexander M. Piper, who testified as follows, viz. (The two papers last mentioned in the subpœna duces tecum, herein before set out, being shewn to him.) I received these from the auditor general, together with the others. The auditor general understood them to be papers called for by the subpœna served on the part of the plaintiffs, and gave them to me as such. There is a pencil mark on the second paper, "acts" made by Mr. Farrand.

The auditor handed me three papers he designated as original or official, and these two as coming from the private papers of Mr. Nicholson.

The defendants then gave in evidence the said two papers, (it being agreed that the body of the said papers is not in the handwriting of Mr. Donaldson, but that the signature, title of office, and date are,) upon which said papers were endorsements; one in the handwriting of John Nicholson, viz:

"4,828. Account. John Donaldson, for March 21, 1797."

The other in the handwriting of James Gibson, esq., counsel of said John Nicholson, to wit:

"S. C. September, 1796. Commonwealth *vs.* John Nicholson."

Of which said papers and endorsements here follow copies.

No. 1.

DR. *JOHN NICHOLSON account in Continental certificates with the State of Pennsylvania.* CR.

To balance of account, settled March 1796	$58,429 24	By receipt of him, March, 1796	$4,220 02
		By do. September, 1796	3,000 00
		By balance to n. a.	51,209 22
To balance due	$51,209 22		58,429 24

JOHN DONALDSON,
Comptroller General's Office, Nov. 19, 1796.

E. M. GREGG, *of the Auditor General's Office.*

No. 2.

DR. *JOHN NICHOLSON account 3 per ct. stock of the U. States, in account with State of Pennsylvania.* CR.

To balance his account settled, March, 1796	66,450 24	By interest on certificates received of him, March 1796	1,398 18
		By interest on a certificate received of him, September, 1796	1,321 00
		By balance to n. a.	63,731 06
To balance due the State	$63,731 06		$66,450 24

JOHN DONALDSON,
Comptroller General's Office, Nov. 19, 1796.

E. M. GREGG, *of the Auditor General's Office.*

93

287

The defendants also gave in evidence, an act of the legistature of Pennsylvania, passed the 20th April, 1795, entitled "An act to provide for the settlement of the accounts of John Nicholson, late comptroller general."

The evidence on the part of the defendants being closed, the plaintiffs again offered in evidence the said leger C, with a view to show that there are accounts unsettled, between John Nicholson and the commonwealth of Pennsylvania.

But the admission of the said evidence was objected to by the defendants, and rejected by the court, because the same was not competent evidence; and also because, in the opinion of the court, it was not proper to be admitted at this stage of the cause; to which rejection of the said evidence, the plaintiffs excepted.

The plaintiffs further gave in evidence, two advertisements of Samuel Bryan, comptroller general; the first thereof, contained in the newspaper called the Aurora, dated 20th July, 1803; and the second thereof, contained in the Aurora, of the 27th of January, 1804. The testimony for both plaintiffs and defendants being closed, the court charged and instructed the jury:

1st. That the accounts between John Nicholson and the commonwealth, or some of them, were so settled and adjusted, that the balances or sums of money, thereby found due to the Commonwealth, were good and valid liens on all the real estate of John Nicholson, throughout the State of Pennsylvania.

2d. That the judgments rendered by the supreme court of the State, in favor of the commonwealth, against John Nicholson, also constituted good and valid liens upon all his real estate throughout the State.

3d. That the several acts of the general assembly of Pennsylvania, passed on the 31st of March, 1806, and on the 19th of March, 1807, are not repugnant to, or in violation of the Constitution of the United States, or of Pennsylvania; but that they are good and valid laws, and a rightful exercise of the powers of the legislature of Pennsylvania; that the whole law of the case is, therefore, in favor of the defendants.

And thereupon, the counsel for the said plaintiffs, did then and there except to the aforesaid charge and opinion of the court; and, inasmuch as the said several exceptions taken, and the said charge and opinion excepted to, do not appear upon the record, the said counsel for the plaintiffs, did then and there tender this bill of exceptions to the opinions of the said court; and requested the seal of the judge aforesaid should be put to the same, according to the form of the statute in such case made and provided. And thereupon, the aforesaid judge, at the request of the said counsel for the plaintiffs, did put his seal to this bill of exceptions, in pursuance of the said statute, this fifth day of November, A. D. 1831.

JOSEPH HOPKINSON, [L. S.]

SUPPLEMENT TO THE AURORA, WEDNESDAY, JULY 20TH, 1803.

Caution.

Whereas the commonwealth of Pennsylvania have liens on the tracts of land hereinafter described, by virtue of divers judgments obtained in the supreme court against the late John Nicholson, esquire, deceased; and whereas the late comptroller general has entered a caveat in the office of the secretary of the land office, against the issuing of patents for the tracts of land above mentioned in the name of JohnNicholson, or in the name of any other person;

287

This is, therefore, to warn all persons against the purchasing of the tracts of land hereinafter described, at the sales now advertised, or which hereafter may be advertised by the marshal of the United States; and also from applying for patents or warrants on improvement claims for any of the same tracts of land.

And the commissioners of the several counties in which any of the tracts of land aforesaid may be situated, are requested to defer sale of them for taxes assessed thereon, until the commonwealth may have had time to make provisions for their payment.

The following is a description of the tracts of land above referred to, to wit: (then follows a list of the said lands.)

SAMUEL BRYAN.

COMPTROLLER GENERAL'S OFFICE, LANCASTER, *July 11th*, 1803.

AURORA EXTRA, FRIDAY, JANUARY 27TH, 1804.

Caution.

Whereas the commonwealth of Pennsylvania have divers liens on the tracts of land hereinafter described, late the estate of John Nicholson, esq., deceased, former comptroller general, for debts of great magnitude, due by the estate of the said John Nicholson to the commonwealth; and whereas the comptroller general has entered a caveat in the office of the secretary of the land office, against the issuing of patents for the tracts of land aforesaid, in the name of John Nicholson, or in the name of any other person; and also a caveat in the same office against the issuing of warrants to any person for the aforesaid tracts of land, under improvement claims; and whereas divers sales have been made of the aforesaid tracts of land by the sheriffs of the several counties wherein they are situate, and by the marshal of the United States under liens of a younger date, and therefore all such sales being invalid until the debts due the commonwealth aforesaid, are discharged. This is, therefore, to warn all persons against applying for patents or warrants from the land office for the aforesaid tracts of land; and also against purchasing the same tracts of land under the invalid sales of the sheriffs and marshal aforesaid.

And the commissioners of the several counties in which any of the tracts of land aforesaid may be situate, are requested to defer the sale of them for taxes assessed thereon, until the commonwealth may have had time to make the requisite arrangements.

The following is a description of the tracts of land above referred to, viz: (then follows a list of the said lands.)

SAMUEL BRYAN.

COMPTROLLER GENERAL'S OFFICE, LANCASTER, *January* 9, 1804.

Circuit Court United States, Pennsylvania district.

Lessee of NICHOLSON,
vs.
MOORE, MAHON, et al. } *Ejectment.*

It is agreed that the above extracts from the newspapers called the Aurora, of the 20th July, 1803, and 27th January, 1804, read upon the trial of this case; may be used upon the argument of the writ of error before the Supreme Court of the United States, as if inserted in the bill of exceptions, either party being at liberty to produce the originals.

JOHN SERGEANT, *for defendants.*
BENJ. TILGHMAN, *for plaintiffs.*

November 23, 1831.